Supreme Court, U.S.
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No. 93-1210

In The

# Supreme Court of the United States

October Term, 1993

CHARLES LePRINCE,

*Petitioner,*

*vs.*

BOARD OF TRUSTEES, TEACHERS' PENSION AND ANNUITY FUND,

*Respondent.*

*On Petition for a Writ of Certiorari to the Supreme Court of New Jersey*

## REPLY BRIEF FOR PETITIONER

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## RESPONSIVE STATEMENT OF FACTS

Petitioner Charles LePrince worked for more than twenty-two years as a psychologist in the Clifton, New Jersey public school system. A supervisor, reviewing his work near the end of his career, called him "an exemplary model for other school psychologists." Even during a period of failing health, after the event which caused his criminal conviction and partial pension forfeiture, an evaluation of the petitioner noted that "his productivity and leadership in the area of school psychology has remained outstanding."[1] Upon his retirement, the Board of Education in Clifton acknowledged his "exemplary service to [his] pupils and to this community."

During the petitioner's tenure with the Clifton schoo' system, he met the student who is the subject of the charge to which the petitioner pled guilty. A close relationship developed between the petitioner and the student's family outside the school context. That friendship continued throughout the proceedings in New Jersey ten years after the incident. The student's father submitted a letter to the Administrative Law Judge requesting that the petitioner's pension not be reduced.

While this support from the victim's father might seem unusual, it can probably be best understood if one is aware of the facts of the central incident. Sometime after developing a personal relationship with the family, the petitioner and the student were alone in the petitioner's car, after school hours, off school property, and at a time when the petitioner had no official duties with respect to the student. The petitioner placed his hand on the student's thigh and was asked to remove it. He did so and there was not further repetition of this conduct. However, the act constituted

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1. Petitioner's evaluations are contained in the record below.

the crime of aggravated criminal sexual contact under New Jersey law.

## FURTHER REASONS FOR GRANTING THE WRIT

### I.

### THE WRIT SHOULD BE GRANTED TO CLARIFY THE MEANING OF PUNISHMENT WITHIN THE CONTEXT OF THE DOUBLE JEOPARDY CLAUSE.

Respondent argues that, "The goal of pension forfeiture is not to punish in the 'relevant sense' under the Double Jeopardy Clause." This argument is apparently designed to address Justice Blackmun's explanation in *United States v. Halper*, 490 U.S. 435, 109 S. Ct. 1892 (1989), that in order to determine whether a "civil sanction constitutes punishment in the relevant sense" requires an "assessment of the penalty imposed and the purposes served by the penalty." Justice Blackmun explained,

> A civil as well as a criminal sanction constitutes punishment when the sanction as applied in the individual case serves the goals of punishment.
>
> These goals are familiar. We have recognized in other contexts that punishment serves the twin aims of retribution and deterrence.

490 U.S. at 448, 109 S. Ct. at 1901-1902 (citations omitted).

Furthermore, it was noted that "retribution and deterrence are not legitimate nonpunitive governmental objectives." *Id.*

In *Eyers v. Public Employees' Retirem. Sys.*, 91 N.J. 51, 56, 449 A.2d 1261, 1264 (1982), the assessment about which Justice Blackmun wrote was made. There, the Supreme Court of New Jersey explained that "pension forfeiture policy is penal in nature and has as its objectives the same considerations underlying all such schemes: punishment of the individual and deterrence, both as to the offending individual and other employees." Thus it is clear that, under New Jersey law, pension forfeiture serves, at least "in part to punish" and that is the test for double jeopardy purposes. *Austin v. United States*, 113 S. Ct. 2801, 2806 (1993).

Respondent relies upon the decision of the Appellate Division of the Superior Court of New Jersey in analogizing pension forfeiture to "a judgment for damages arising out of a breach of contract." *LePrince v. Teachers' Pension Fund*, 267 N.J. Super. 270, 277, 631 A.2d 545, 549 (App. Div. 1993). This analogy is incorrect. A pension is part of a compensation package agreed upon between the Board of Education and their employees. By the Board's own evaluation, the petitioner performed his services and did so in an exemplary fashion. Unlike a party to a breached contract, the Board of Education, and certainly the Teachers' Pension and Annuity Fund (T.P.A.F.) was not injured. The Board of Education received the services for which they paid the petitioner. Reducing the petitioner's pension is not designed in any way to "make the T.P.A.F. whole." Rather, as the Supreme Court of New Jersey has consistently held, reduction of a pension is meant to punish. Accordingly, that punishment, in addition to the punishment imposed in the criminal process, violates the prohibition of the Double Jeopardy Clause.

## CONCLUSION

For the foregoing reasons, as well as those contained in the original petition, it is respectfully submitted that this petition for a writ of certiorari be granted.

Respectfully submitted,

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